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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,525	10/11/2005	Katsu Kondo	KPO-SUN-P4/SN-89/US	4420

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EXAMINER	
STULII, VERA	

ART UNIT	PAPER NUMBER
1781	

NOTIFICATION DATE	DELIVERY MODE
08/10/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/552,525	KONDO ET AL.	
	Examiner	Art Unit	
	VERA STULII	1781	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *5* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *17,19,20,22-30,32 and 33*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1781

Continuation of 11.

Applicants' comments filed 07/21/2010 have been considered, but are not found persuasive.
In regard to Applicants' argument regarding rejection of claims under 35 U.S.C. 112, second paragraph, it is noted that claims 32 and 33 have been amended to include the language "as an ingredient" to characterize immersion liquid. However, this amendment is not sufficient to overcome the rejection of claims under 35 U.S.C. 112, second paragraph. The rejection is maintained for the reasons of record. Applicants are referred to the final Office action page 2.

In regard to Applicants' arguments regarding Todorova et al reference, it is noted that Examiner has relied upon on the whole disclosure of the Todorova (as a native russian/bulgarian speaker), not just on the Abstract. Todorova et al discloses further removing the malt sprouts after the immersion step during the soluble extract preparation (p.17).Todorova et al discloses the use of malt sprouts extract in beer production as a partial substitute for malt extract in beer wort production because of the nutrient value of malt sprouts extract and because of the further efficient use of byproduct such as malt sprouts (Abstract). Therefore, malt sprouts are not the part of the final beverage product. Further in this regard, it is noted that Todorova et al discloses beer production. Further in this regard, Table 3 in Todorova et al shows that use of the immersion liquid in the production of beer wort balanced the amount of nitrogen in the resulting wort, but did not significantly affect the amounts of other components. Therefore, since Todorova et al discloses the use of malt sprouts extract in beer production as a partial substitute for malt extract in beer production, and since beer wort undergoes multiple production steps afterwards, and since Todorova et al shows that use of the immersion liquid in the production of beer wort balanced the amount of nitrogen in the resulting wort, but did not significantly effected the amounts of other components, Todorova et al meets the limitation associated with the taste of the final beer beverage.

In response to the Applicants' arguments regarding Yamamoto reference, it is noted that Yamamoto is relied upon as a teaching of a process for producing food products, using malt sprouts of a controlled particle size (Abstract). Yamamoto discloses the process for producing food products, wherein the malt sprouts of controlled particle size are crushed at a low degree of crushing (Abstract, p. 3 Examples 1, 2). In regard to claim 33, which recites particle size smaller than 150μm, Yamamoto discloses that particles are finely crushed by a crusher having 50-200 μm clearance (Abstract).